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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 MARTHA I. PEREZ,) No. CV 12-10369-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 CAROLYN W. COLVIN, Acting)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
22 _____)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the Administrative
24 Record ("AR") before the Commissioner. The parties have filed the
25 Joint Stipulation ("JS"), and the Commissioner has filed the certified
26 AR.

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") erred in

1 discounting the medical opinions of treating physicians
2 Pappas, Gutierrez, Fuenzalida, and Barba; and

3 2. Whether the ALJ erred in finding that Plaintiff's subjective
4 complaints are not credible.

5 (JS at 6.)

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7 This Memorandum Opinion will constitute the Court's findings of
8 fact and conclusions of law. After reviewing the matter, the Court
9 concludes that for the reasons set forth, the decision of the
10 Commissioner must be reversed and the matter remanded.

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12 I

13 **SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE ALJ'S**

14 **DETERMINATION OF PLAINTIFF'S RESIDUAL FUNCTIONAL CAPACITY**

15 On May 15, 2009, Plaintiff filed applications for disability
16 insurance benefits and Supplemental Security Income, alleging an onset
17 date of June 4, 2008. After administrative denials, Plaintiff was
18 granted a hearing before an ALJ (AR 45-80), at which Plaintiff
19 testified through an interpreter, and testimony was taken from a
20 vocational expert ("VE"), and a lay witness. Thereafter, on May 13,
21 2011, the ALJ rendered a written Decision (AR 23-31), and there
22 reached a determination that Plaintiff has not been under a disability
23 from the alleged onset date to the date of the Decision. (AR 31.) For
24 reasons to be set forth, the Court finds that this determination is
25 not supported by substantial evidence, and will be reversed and
26 remanded for a new hearing.

27 Plaintiff's previous work was as a banquet server in a hotel and
28 then as an in-home caregiver until 2007. (AR 53.) She suffered a

1 stroke on June 3, 2008 (AR 50-54.) At that time, she indicated to her
2 medical professionals that she experienced dizziness and poor balance
3 and had fallen because of that several times. (AR 54-55.) She has
4 incontinence problems and indicates she has been diagnosed with
5 chronic hematuria and an overactive bladder. (AR 63-67.) She also
6 complains of severe lower back pain which radiates to the bottom of
7 her foot. (AR 54.) She has been treated by her neurologist for
8 depression. (AR 63.) She has been prescribed medications to combat
9 her dizziness and vertigo, back pain, blood pressure, depression, and
10 for prevention of strokes, and has had a lack of long term success
11 from medications intended to address her urinary problems. (AR 5-58,
12 63, 66.)

13 Following her stroke, Plaintiff was examined and treated by
14 family practitioner Dr. Pappas in July 2008, at which point she had
15 improved somewhat but still experienced dizziness, vertigo, balance
16 problems, gait ataxia, and persistent headaches. (AR 282.) These
17 symptoms were again reported to her doctors in January 2009 (AR 261),
18 May 2009 (AR 258), and at other times.

19 In 2010, Plaintiff was treated by family practitioner Dr.
20 Gutierrez and at that time had a mild facial droop. (AR 383.) Both
21 Dr. Pappas and a neurologist, Dr. Fuenzalida, indicated that Plaintiff
22 required use of an assistive device for walking (AR 282), and Dr.
23 Fuenzalida, on January 28, 2011, indicated that he has been following
24 Plaintiff since her stroke, and that he had changed her blood pressure
25 medication from Coumadin to Aggrenox, later changed to generics. (AR

1 484.)¹ Dr. Fuenzalida assessed that Plaintiff can sit for eight
2 hours in an eight-hour day, and can stand or walk only one hour. (AR
3 537.) He also noted that Plaintiff is depressed following her stroke.
4 (AR 538.) Dr. Fuenzalida also limited Plaintiff to lifting or
5 carrying up to ten pounds occasionally. These conclusions were
6 reiterated by Dr. Fuenzalida in a letter dated June 24, 2011 in which
7 he also concluded that Plaintiff's impairments would result in her
8 being absent from work more than three days per month. (AR 548.) As
9 will be noted, this is a significant conclusion, in that at the
10 hearing, when this absence from work factor was incorporated into a
11 hypothetical question, the VE concluded that this would "preclude
12 competitive employment." (AR 75-76.) The ALJ determined that Dr.
13 Fuenzalida's opinion was "speculative," but the Court rejects that as
14 a non-analytic conclusion, as will be more fully discussed.

15 With regard to Plaintiff's incontinence issues, she was referred
16 by Dr. Gutierrez to a urologist, Dr. Martinez, who examined Plaintiff
17 and wrote a letter to Dr. Gutierrez on March 26, 2010. (AR 514.) In
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19 ¹ The Commissioner makes much of the fact that about five
20 months after Plaintiff's stroke, Dr. Pappas said that she would remain
21 on Coumadin for the rest of her life. (AR 232.) The Commissioner
22 makes no comment on the fact that the neurologist, Dr. Fuenzalida,
23 discontinued Coumadin, but changed the applicable drug to Aggrenox.

24 Although Dr. Pappas indicated that doctors were "working to
25 control her blood pressure and hope gradually her neurological
26 symptoms will abate" (AR 232), Dr. Fuenzalida completed a "Stroke
27 Impairment Questionnaire" (AR 534-539) in March 2011 stating, in part,
28 that "[Plaintiff] has a residual gait ataxia from the stroke [sic] she
needs a cane to help her gait [sic] this is fixed neurological
deficit. No further recovery is predicted." (AR 534.) As the Court
will discuss, much of the underpinning for the ALJ's determination of
nondisability is based on his lay conclusion that Plaintiff's
ambulation problems stem from high blood pressure. The ALJ failed to
comment on or evaluate Dr. Fuenzalida's apparent conclusion that
Plaintiff's problems had a neurological cause.

1 that letter, Dr. Martinez indicated a treatment plan, and on May 7,
2 2010, followed up with another letter indicating that progress had
3 been made, and that Plaintiff "now suffers no urgency incontinence
4 whatsoever." (AR 449.)

5 At the hearing, Plaintiff indicated that her urinary symptoms had
6 returned and that they had failed to respond to three different
7 medications, but she had not been able to follow up with Dr. Martinez.
8 (AR 66.) In October 2010, Dr. Gutierrez attested that Plaintiff again
9 complained of some urinary incontinence (AR 354-357), and urologist
10 Dr. Barba completed a "Bladder Problem Impairment Questionnaire" in
11 March 2011 (AR 541-545), which diagnosed "chronic hematuria and
12 overactive bladder with urgency urinary incontinence." Dr. Barba's
13 prognosis for Plaintiff was "poor." (AR 541.) It appears that at this
14 time Plaintiff was beginning a course of treatment involving tibial
15 nerve stimulation (see AR 542-543), but the effectiveness of that new
16 therapy was undetermined at the time of the hearing in this matter.
17 Plaintiff described her urinary frequency to Dr. Barba as 18-20 times
18 per 24 hours and 10 times during an eight-hour workday. (AR 543.)

19 The ALJ determined Plaintiff's RFC as enabling her to perform
20 light work which requires an ability to exert up to 20 pounds of force
21 occasionally and up to 10 pounds of force frequently. He also
22 assessed that Plaintiff can stand and walk up to six hours and sit up
23 to six hours in an eight-hour workday with normal breaks, provided
24 that her standing and walking does not exceed one hour at a time after
25 which she must be allowed to sit at least five minutes before resuming
26 standing and walking. Additional limitations not relevant to the
27 issues in this case were assessed; however, the ALJ indicated that she
28 would require a rest room not remote from her work station to

1 accommodate her need to periodically urinate. (AR 26.)

2 The medical sources which are identified in the Decision include
3 discussion of Dr. Pappas' opinion; Dr. Gutierrez'; Dr. Fuenzalida's;
4 and Dr. Barba's (erroneously referred to as Dr. Barma). (AR 28-29.)

5 As to the ALJ's evaluation of Dr. Pappas' conclusions, he relied
6 on his own conclusion that Dr. Pappas had been working to control
7 Plaintiff's blood pressure, which medical records showed was not under
8 control, but concluded that "Dr. Pappas' opinion is contradicted by
9 other doctors' records." (AR 29.)

10 With regard to Dr. Gutierrez, the ALJ simply made a conclusory
11 statement that despite the fact that she is Plaintiff's primary care
12 physician, "little weight is accorded to the restrictions she imposes
13 on standing, walking, and reaching, as they are not well supported by
14 clinical data and/or diagnostic findings; and her statement concerning
15 absences is speculative." (AR 28-29.)

16 The ALJ noted that Dr. Fuenzalida, the neurologist, had only seen
17 Plaintiff four times, but rejected Dr. Fuenzalida's significant
18 conclusion that Plaintiff could only stand or walk one hour within an
19 eight-hour workday because it was without sufficient foundation,
20 "particularly in light of the fact that magnetic resonance imaging
21 shows the lumbar spine is within normal limits and the thoracic spine
22 has only some slight degenerative disc disease." (AR 29.)

23 Finally, the ALJ rejected Dr. Barba's opinion with regard to
24 Plaintiff's significant urinary incontinence issues because it did not
25 "seem reasonable in light of [Plaintiff's] treatment records ... his
26 conclusions are not borne out by treatment records from a year earlier
27 which indicate her bladder problems had been resolved." (Id.)

28 It is of course hornbook law that an ALJ may only reject

1 uncontradicted opinions of treating physicians for clear and
2 convincing reasons, and if a treating physician's opinion is
3 inconsistent with other evidence in the record, there must still be
4 specific and legitimate reasons cited in the Decision. See Reddick v.
5 Chater, 157 F.3d 715, 725 (9th Cir. 1998), Lester v. Chater, 81 F.3d
6 821, 830 (9th Cir. 1995). As the Ninth Circuit has clearly stated, it
7 is entirely insufficient for an ALJ to reject the opinions of
8 physicians by generic comments that such opinions are not supported by
9 objective findings or are contrary to some unstated medical evidence.
10 See Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988). In order for
11 the Court to perform a sufficient level of judicial review, an ALJ's
12 Decision must set forth the reasons for rejection of particular
13 evidence based on specific discussion of contradictory evidence and
14 why one is more persuasive than the other. In this case, that did not
15 occur as to any of the physicians who treated Plaintiff. In addition
16 to that deficiency, this ALJ did not rely upon a medical expert, but
17 instead, substituted his own lay opinion as to causation of
18 neurological problems as being based on blood pressure issues, despite
19 the fact that Plaintiff was treated by neurologists who assessed
20 neurological causes for Plaintiff's impairments, such as gait ataxia.
21 Moreover, the ALJ seemed unwilling to accept that medications which
22 might have helped such things as incontinence at one point might have
23 become ineffective. If this was just an issue of Plaintiff's
24 subjective complaints, it might be more reasonable to reject them, but
25 in this case, there is clear and substantial evidence that Plaintiff's
26 medications were changed, and she was beginning a new course of
27 treatment for her incontinence problems which had not yet been
28 successful.

1 With regard to rejection of Dr. Fuenzalida's conclusions, the ALJ
2 inserted his own interpretation of MRI imaging as to Plaintiff's
3 lumbar spine and his own conclusion that Plaintiff's thoracic spine
4 has only some slight degenerative disc disease. (AR 29.) This is not
5 corroborated by any medical source, and the Court will note that the
6 Commissioner's reliance on the opinion of an examining neurologist,
7 Dr. Mays, from July 2009 (AR 283-286), has no relevance whatsoever, in
8 that the ALJ failed to even mention Dr. Mays' conclusions, much less
9 rely on them. The Commissioner relies on seminal cases such as Batson
10 v. Commissioner of Social Security Administration, 359 F.3d 1190, 1195
11 (9th Cir. 2004) to argue that in this case the ALJ rightfully rejected
12 the opinions of treating physicians which are conclusory, brief and
13 unsupported by the record as whole by objective findings. (JS at 16.)
14 That is not at all the case here. Plaintiff was treated by these
15 physicians, and their opinions were rejected despite being supported
16 by objective testing and examination. The fact that Plaintiff may
17 have shown some improvement in her symptomology at times after her
18 stroke is not the determinative factor in assessing her continuing
19 condition.

20 For the foregoing reasons, the matter will be remanded for
21 reconsideration of the opinions of Plaintiff's treating and examining
22 physicians, and additional evidence may be taken to determine the
23 issue of disability.

24 With regard to the assessment of Plaintiff's credibility
25 concerning subjective symptoms, the ALJ found Plaintiff not credible
26 to the extent that her complaints are inconsistent with the RFC
27 assessment. (AR 27.) The reasons cited by the ALJ (AR 27-28) mostly
28 repeat the ALJ's evaluation of the objective medical evidence, which

1 the Court has already discounted in remanding this for a new hearing.
2 An additional factor cited by the ALJ is that Plaintiff has received
3 an essentially conservative level of treatment not requiring any
4 "hospitalization, surgery, exquisite therapies, or any other
5 extraordinary treatments." (AR 28.) The Court has difficulty
6 understanding what the ALJ would consider to be appropriate treatment
7 for the impairments and symptoms experienced by Plaintiff, especially
8 in the absence of any medical evidence that such additional or other
9 treatments might be effective. The ALJ apparently gave short shrift
10 to any consideration that neurological problems are difficult to
11 treat, that Plaintiff has had bladder problems which her physicians
12 have attempted to address with different types of treatment, thus far
13 unsuccessful, and that, as noted, Plaintiff continues to be treated
14 for blood pressure issues, but her problems appear to be more
15 neurological than a result of hypertension. The Court agrees with
16 Plaintiff that the ALJ's discounting of her credibility is largely
17 based upon substitution of his own medical judgment as to what
18 treatment might or would be appropriate, and his own medical
19 assessments, which the Court has already indicated are beyond his
20 expertise. See Tackett v. Apfel, 180 F.3d 1094, 1102 (9th Cir. 1999);
21 Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975). In this case
22 also, it appears that Plaintiff has diligently attempted to follow the
23 course of treatment recommended by her doctors. Her primary treating
24 physicians have referred her to specialists, such as neurologists and
25 urologists, where appropriate. All of these doctors have assessed
26 impairments which they have attempted to treat in various ways. All
27 in all, the credibility assessment factors set forth by the ALJ in the
28 Decision are wholly insufficient. On remand, Plaintiff's credibility

1 will be redetermined in accordance with appropriate consideration of
2 her treatment history and the opinions of her treating physicians.

3 For the foregoing reasons, this matter will be remanded for
4 further hearing consistent with this Memorandum Opinion.

5 **IT IS SO ORDERED.**

6
7 DATED: August 19, 2013

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE